

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RANDALL FOX,

Case No:

Hon.

Mag.

Plaintiffs,

vs.

DAVID ZIMMER, LUCIA SPECIALIZED
HAULING, INC., A New York corporation, and
ZURICH AMERICAN INSURANCE COMPANY,
a New York property and casualty insurer,

Defendants.

RONALD K. WEINER (P40706)
ZAMLER, MELLEN & SHIFFMAN, P.C.
Attorneys for Plaintiff
23077 Greenfield Rd., Ste. 557
Southfield, MI 48075
(248) 443-6567

TIMOTHY J. JORDAN (P46098)
GARAN LUCOW MILLER, P.C.
Attorneys for Defendants
1000 Woodbridge Street
Detroit, MI 48207
(313) 446-5531

DEFENDANTS' NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. §1446(b)

PLEASE TAKE NOTICE that Defendants DAVID ZIMMER, LUCIA SPECIALIZED HAULING AND ZURICH AMERICAN INSURANCE COMPANY, by and through their counsel, hereby remove the matter entitled *Randall Fox v. David Zimmer, Lucia Specialized Hauling, Inc., a New York corporation and ZURICH AMERICAN INSURANCE COMPANY, a New York property and casualty insurer*, Case No: 12-3955-NI, currently pending in the Circuit Court for the County of Jackson, to the United States District Court for the Eastern District of Michigan. The bases for removal are set forth below.

STATEMENT OF GROUNDS FOR REMOVAL

1. State Court Action. This is an action initially filed in the Circuit Court for the

County of Jackson, State of Michigan on December 26, 2013, being numbered 12-3955-NI on the docket of said Court, asserting a claim against the Defendants DAVID ZIMMER, LUCIA SPECIALIZED HAULING AND ZURICH AMERICAN INSURANCE COMPANY, seeking money damages for personal bodily injuries and medical expenses allegedly sustained and arising out of negligence, negligent entrustment and the claimed denial of no-fault benefits.

2. This Notice of Removal is being filed within 30 days after receiving notice of the complaint by service or otherwise as required by 28 U.S.C. §1446(b).

3. This Court has jurisdiction over this case based on diversity of citizenship pursuant to 28 U.S.C. §1332(a).

3. Citizenship of Parties. The Plaintiff, as is alleged in Paragraph 1 of the Complaint, is a citizen of the United States, and of the State of Iowa. The Defendant, David Zimmer, is a citizen of the United States, and of the State of New York. Defendant Lucia Specialized Hauling, Inc., is a New York corporation. Defendant Zurich American Insurance Company is a New York corporation. For the purposes of the removal, the Defendants are not citizens of the State of Michigan and, therefore, there exists a complete diversity of citizenship between the parties and this Court has jurisdiction pursuant to 29 U.S.C. §1332.

4. Amount in Controversy. Plaintiff generally alleges that the amount in controversy exceeds \$25,000.00 as required to establish state circuit court jurisdiction. Defendants further state that, pursuant to L.R. 81.1, the amount in controversy based on the damages and injuries alleged exceeds \$75,000.00 (exclusive of fees, costs and interest), the jurisdictional amount required under diversity actions.

In support of Defendants' belief that Plaintiff values this matter in an amount greater than \$75,000.00, Defendants direct this court to the damages alleged by Plaintiff which include "injuries to his teeth and gums; closed head injury; spinal disc herniations with radiculopathy, headaches, nerve damage, spinal and extremity injuries, in addition to extreme pain, contusions, abrasions, lacerations, multiple trauma, serious impairment of bodily functions, and severe shock and injury to his nervous system." (Plaintiff's Complaint, ¶13) As further evidence of Defendants' belief that Plaintiff seeks damages in excess of \$75,000.00, Defendants direct this Court to the following damages, as asserted by Plaintiff: "humiliation, embarrassment, mental anguish, gross indignity, and inconvenience because of the permanent nature of his injuries. . ." (Plaintiff's Complaint, ¶14) Finally, as Plaintiff also seeks first party no-fault benefits from Defendant Zurich, under the facts and/or allegations known to date, is believed that Plaintiff contends his damages exceed \$75,000.00, exclusive of the costs, interest and attorney fees.

5. State Court Documents Attached. A Summons and Complaint was served upon the Defendant LUCIA SPECIALIZED HAULING, INC. on January 10, 2013 by certified mail. Removal is timely under 28 U.S.C. §1446(b). LUCIA SPECIALIZED HAULING, INC. has not appeared in the Circuit Court for the County of Jackson, State of Michigan. Attached hereto is a copy of the Complaint and Summons as it was served upon the Defendant LUCIA SPECIALIZED HAULING, INC.

A Summons and Complaint was served upon the Defendant ZURICH AMERICAN INSURANCE COMPANY on January 14, 2013 by certified mail. Removal is timely under 28 U.S.C. §1446(b). ZURICH AMERICAN INSURANCE COMPANY has not appeared in the Circuit Court for the County of Jackson, State of Michigan. Attached hereto is a copy of the Complaint and

Summons as it was served upon the Defendant ZURICH AMERICAN INSURANCE COMPANY.

Upon information and belief, DAVID ZIMMER has not yet been served with a Summons and Complaint, is not in possession of any documents and has not appeared in the Circuit Court for the County of Jackson, State of Michigan.

6. The Other Removal Prerequisites Have Been Satisfied.

All Defendants have consented to this removal.

No Defendant has sought similar relief with respect to this matter.

The prerequisites for removal under 28 U.S.C. §1441 have been met.

The allegations of this notice are true and correct and this cause is within the jurisdiction of the United States District Court for the Eastern District of Michigan.

7. Relief Requested. Defendants DAVID ZIMMER, LUCIA SPECIALIZED HAULING, INC., AND ZURICH AMERICAN INSURANCE COMPANY, each being defended by GARAN LUCOW MILLER, P.C. jointly consent and respectfully request the United States District Court for the Eastern District of Michigan accept this Notice of Removal and that it assume jurisdiction of this cause and issue such further orders and processes that may be necessary to bring before it all parties necessary for the trial hereof.

GARAN LUCOW MILLER, P.C.

/s/Timothy J. Jordan

TIMOTHY J. JORDAN (P46098)

Attorneys for Defendants

1000 Woodbridge Street

Detroit, MI 48207-3192

(313) 446-5531

tjordan@garanlucow.com

P46098

Dated: February 1, 2013

Approved, SCAO STATE OF MICHIGAN JUDICIAL DISTRICT 4th JUDICIAL CIRCUIT COUNTY PROBATE	Original - Court 1st copy - Defendant SUMMONS AND COMPLAINT	2nd copy - Plaintiff 3rd copy - Return CASE NO. 12-3955 NI
Court address 312 Jackson Street, Jackson, MI 49201		Court telephone no. 517-788-4265
Plaintiff's name(s), address(es) and telephone no(s). Randall Fox 200 North Decatur Street Kellerton, IA 50133		Defendant's name(s), address(es), and telephone no(s). Specialized Hauling, Inc. c/o Executive Officer: Richard Lucia 689 Mariaville Rd. Schenectady, NY 12306
Plaintiff's attorney, bar no., address, and telephone no. Ronald K. Weiner (P40706) 23077 Greenfield, Suite 557 Southfield, MI 48075 (248) 443-6567		

Hon. Richard N. LaFlamme

P32641

v

- SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:
1. You are being sued.
 2. **YOU HAVE 21 DAYS** after receiving this summons to **file an answer with the court** and serve a copy on the other party **or to take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
 3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 12/26/12	This summons expires 3/27/13	Court clerk Lori A. Davis Deputy County Clerk
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*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

Family Division Cases

- ☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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General Civil Cases

- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

VENUE

Plaintiff(s) residence (include city, township, or village) Kellerton, IA	Defendant(s) residence (include city, township, or village) Saugerties, NY / Schenectady, NY / East Lansing, MI
Place where action arose or business conducted County of Jackson, MI	

 Date
 12-18-2012

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

PROOF OF SERVICE**SUMMONS AND COMPLAINT**Case No. 12-3455 NI

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order of second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

Hon. Richard N. LaFlamme
P32641

☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with

List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Signature _____
 Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
 Attachments

_____ on _____
 Day, date, time
 _____ on behalf of _____
 Signature

Original - Court 1st copy - Defendant		2nd copy - Plaintiff 3rd copy - Return
STATE OF MICHIGAN JUDICIAL DISTRICT 4th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT Hon. Richard N. LaFlamme P32641	CASE NO. 12-3955NI
Court address 312 Jackson Street, Jackson, MI 49201		Court telephone no. 517-788-4265
Plaintiff's name(s), address(es) and telephone no(s). Randall Fox 200 North Decatur Street Kellerton, IA 50133		Defendant's name(s), address(es), and telephone no(s). Zurich American Insurance Company c/o Registered Agent: CSC-Layers Incorporating Service Co. 601 Abbott Road East Lansing, MI 48823
Plaintiff's attorney, bar no., address, and telephone no. Ronald K. Weiner (P40706) 23077 Greenfield, Suite 557 Southfield, MI 48075 (248) 443-6567		

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

- You are being sued.
- YOU HAVE 21 DAYS** after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action with the court (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
- If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 12/26/12	This summons expires 3/7/13	Court clerk Lori A. Davis Deputy County Clerk
---------------------------	---------------------------------------	---

*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

General Civil Cases

☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

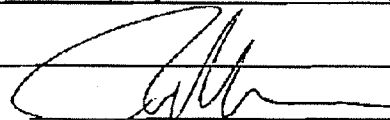
The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) Kellerton, IA	Defendant(s) residence (include city, township, or village) Saugerties, NY / Schenectady, NY / East Lansing, MI
Place where action arose or business conducted County of Jackson, MI	

12-18-2012
Date


Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

PROOF OF SERVICE**SUMMONS AND COMPLAINT**Case No. 12-3955NJ

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order of second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

Hon. Richard N. LaFlamme

P32641

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with

List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.

Date

My commission expires: _____ Signature _____

Date

Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with

Attachments _____

_____ on

Day, date, time

on behalf of _____

Signature _____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

RANDALL FOX,

Plaintiff,

v

Case No. 12-^{-NJ}
Hon. 3955

Hon. Richard N. LaFlamme
P32641

DAVID ZIMMER,
LUCIA SPECIALIZED HAULING, INC.
a New York corporation, and
ZURICH AMERICAN INSURANCE COMPANY,
a New York property and casualty insurer,

Defendants.

ZAMLER, MELLEN & SHIFFMAN, P.C.
RONALD K. WEINER (P40706)
Attorneys for Plaintiff
23077 Greenfield Road, Suite 557
Southfield, Michigan 48075
(248) 443-6567
rweiner@zmslaw.com

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this Court.

COMPLAINT

Plaintiff, Randall Fox, by his attorneys, Zamler, Mellen & Shiffman, P.C., complains against the Defendants as follows:

1. Plaintiff Randall Fox is a resident of the City of Kellerton, County of Ringgold, State of Iowa.

ZAMLER, MELLEN, & SHIFFMAN, P.C.

2. Defendant David Zimmer, is a resident of the City of Saugerties, County of Ulster, State of New York.

3. Defendant Lucia Specialized Hauling, [hereafter "Lucia"] is a New York corporation, doing business in Jackson County, and has serving as its chief executive officer, Richard Lucia, 689 Mariaville Rd., Schenectady, NY 12306.

4. Defendant Zurich American Insurance Company [hereafter "Zurich"] is a New York property and casualty insurer which is an admitted insurer certified under MCLA 500.3163 for no-fault in the State of Michigan, and has serving as its registered agent, CSC-Lawyers Incorporating Service Co, 601 Abbott Road, East Lansing, MI 48823.

5. The amount in controversy exceeds the sum of Twenty-Five Thousand Dollars (\$25,000.00). [MCR 2.111(B)(2)].

6. On or about the 1st day of February 2012, at approximately 8:19am, plaintiff was a passenger of an Amtrak train, Wolverine Line #351 which was en route from Detroit to Chicago and was traveling westbound at or near the intersection of Portage in the Township of Leoni, County of Jackson, State of Michigan.

7. On or about the same date, time and location, Defendant, Lucia was the owner of a certain 2003 Western Star truck, a motor vehicle, bearing New Jersey license #AG397U; which was then being operated by Defendant, David Zimmer, with the express or implied consent of Defendant, Lucia, and who negligently allowed his vehicle to remain standing on the railroad track.

8. Plaintiff was not guilty of negligence or comparative negligence in the instant collision.

Count I - Negligence - David Zimmer

9. Plaintiff incorporates Paragraphs 1 through 8 of this Complaint.

10. It was the duty of the Defendant, David Zimmer, to operate said motor vehicle in a careful and prudent manner, and to exercise due care and caution in such operation without any negligence in accordance with the laws of the State of Michigan and the local ordinances.

11. Disregarding these duties, Defendant, David Zimmer operated the motor vehicle in a careless, reckless and negligent manner, without due care, caution and observation, thereby causing a collision with the Amtrak train and causing plaintiff to be severely injured.

12. Defendant David Zimmer operated the motor vehicle in a careless, reckless, and negligent manner including, but not limited to, the following:

- A. Driving without due care and caution and in manner so as to endanger the passengers of the Amtrak train including Plaintiff and damage her person and property and failing to keep the said motor vehicle under control so as to avoid the collision with the Amtrak train;
- B. Failing to keep a proper lookout for an approaching train;
- C. Driving a motor vehicle on the highway carelessly and heedlessly in willful disregard of safety of others, including the Plaintiff, without due caution and circumspection and at a speed so as to endanger person and property. Violation of MCLA 257.626; MSA 9.2326 and appropriate amendments thereto;
- D. Carelessly, recklessly, and negligently operating a motor vehicle with defective brakes, in violation of MCLA 257.705; MSA 9.2405 and appropriate amendments thereto;
- E. Failing to traverse the railroad crossing when it was safe to do so. MCLA 257.668 (1)
- F. Failing to assure that his commercial motor vehicle had sufficient undercarriage clearance before crossing the railroad. MCLA 257.669a (3), 49 CFR 392.10, 11;
- G. Crossing a railroad when the vehicle could not be driven completely through the crossing without stopping. MCLA 257.669a (4), 49 CFR 392.10, 11;
- H. Performing other acts of negligence not yet known by Plaintiff but which will be ascertained during the discovery of this litigation.

13. As a direct and proximate result of these acts of negligence, Plaintiff was caused to suffer personal injuries including, but not limited to, the following: injuries to his teeth and gums; closed head injury; spinal disc herniations with radiculopathy, headaches, nerve damage, spinal and extremity injuries, in addition to extreme pain, contusions, abrasions, lacerations, multiple trauma, serious impairment of bodily functions, and severe shock and injury to his nervous system, and any and all damages the proofs may show.

14. Prior to this accident, Plaintiff was a reasonably strong and healthy person; as a direct and proximate result of the negligence of the Defendants, he became ill and sore; he has suffered pain, humiliation, embarrassment, mental anguish, gross indignity, and inconvenience because of the permanent nature of his injuries, he has suffered or may yet suffer aggravation or activation of a pre-existing condition and he will be unable to participate in the usual activities of life in which he indulged prior to his injuries.

WHEREFORE, Plaintiff prays for a Judgment against Defendants of damages in whatever amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) he is deemed to be entitled by this Honorable Court and/or Jury, together with costs, interest, and attorney fees.

Count II - Vicarious Liability - Lucia

15. Plaintiff incorporates paragraphs 1 through 14 of this Complaint

16. With reference to the allegations contained in Count I, Plaintiff alleges that Defendant, Lucia is liable for the acts of negligence asserted against Defendant, David Zimmer who was operating Defendant, Lucia's vehicle, and is therefore also liable for the damages to Plaintiff as set forth above [MCLA 257.401; MSA 9.2101].

WHEREFORE, Plaintiff prays for a Judgment against Defendants, of damages in whatever amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) he is deemed to be entitled by this Honorable Court and/or Jury together with costs, interest, and attorney fees.

Count III - Negligent Entrustment - Lucia

17. Plaintiff incorporates paragraphs 1 through 16 of this Complaint.

18. Defendant, Lucia, carelessly, recklessly and negligently entrusted said motor vehicle and the operation thereof to Defendant, David Zimmer, the latter being a person incompetent and unfit to drive a motor vehicle upon the highways of the State of Michigan by reason of inability, inexperience and consistently negligent driving, all of which were known and should have been known in the exercise of reasonable care and caution by Defendant, Lucia.

19. Defendant Lucia, is thereby guilty of negligence toward Plaintiff, such negligence being the direct and proximate cause of Plaintiff's injuries as described above.

WHEREFORE, Plaintiff prays for a Judgment against Defendants, of damages in whatever amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) he is deemed to be entitled by this Honorable Court and/or Jury together with costs, interest and attorney fees.

Count IV - Denial of No-Fault Benefits - Zurich

20. Plaintiff incorporates paragraphs 1 through 19 of this Complaint.

21. At the time of this accident, plaintiff was not covered by a policy of no-fault insurance nor did he have a resident relative domiciled in the State of Michigan with a policy of no-fault insurance.

22. That on or about the above date and time, Plaintiff was involved in a motor vehicle collision arising out of the ownership, operation, maintenance, or use of a vehicle.

23. Pursuant to priority provisions in the Michigan No Fault Insurance statute, Zurich, the insurer of Lucia's vehicle, is responsible to pay no-fault benefits to plaintiff.

24. That as a direct and proximate result of the collision, the Plaintiff has suffered damages and seeks all those benefits due and owing under the Michigan No-Fault Insurance Act,

including Personal Injury Protection Benefits as provided by MCLA 500.3101-500.3179 et. seq., and including but not limited to the following:

- (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, nursing care, attendant care, medical services, and accommodations for an injured person's care, recovery, and rehabilitation;
- (b) Replacement service expenses, not exceeding Twenty Dollars (\$20.00) per day, reasonably incurred during the first three years after the date of the accident;
- (c) Allowable expenses reasonably incurred, including all attorney fees expended in pursuing this cause of action.

25. That Plaintiff gave proper notice to the Defendant as soon as practicable after the collision, and has, in all things conformed to, observed all the articles, stipulations, and conditions which on his part were to be observed and performed according to the no-fault law.

26. That defendant Zurich has failed to acknowledge plaintiff's claim for benefits and has refused to pay for any benefits incurred.

27. That Defendant is or may be during the course of this litigation, without cause or justification, further guilty of unreasonably refusing to pay full benefits to which Plaintiff is justly entitled, as required by the No-Fault law which entitles Plaintiff to recover penalty interest and attorney's fees under the Michigan No-Fault Act, MCL 500.3142 and MCL 500.3148.

WHEREFORE, Plaintiff requests Judgment against the Defendant, for whatever amount above Twenty-Five Thousand Dollars (\$25,000.00) he is deemed to be entitled, by the trier of fact, together with costs, interest and attorney fees.

ZAMLER, MELLEN & SHIFFMAN, P.C.

BY: 

RONALD K. WEINER (P40706)

Attorneys for Plaintiff

23077 Greenfield Road, #557

Southfield, Michigan 48075

(248) 443-6567

Date: December 17, 2012

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RANDALL FOX,

Case No:

Hon.

Mag.

Plaintiffs,

vs.

DAVID ZIMMER, LUCIA SPECIALIZED
HAULING, INC., A New York corporation, and
ZURICH AMERICAN INSURANCE COMPANY,
a New York property and casualty insurer,

Defendants.

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Attorneys for Plaintiff
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Southfield, MI 48075
(248) 443-6567

TIMOTHY J. JORDAN (P46098)
GARAN LUCOW MILLER, P.C.
Attorneys for Defendants
1000 Woodbridge Street
Detroit, MI 48207
(313) 446-5531

AFFIDAVIT

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

TIMOTHY J. JORDAN, being first duly sworn, deposes and says, that he is associated with the law firm of GARAN LUCOW MILLER, P.C. and that he has been charged with the defense and representation of DAVID ZIMMER, LUCIA SPECIALIZED HAULING, INC., AND ZURICH AMERICAN INSURANCE COMPANY, Defendants herein; that in such capacity he has prepared the foregoing of Notice for Removal of Cause to the United States District Court, Eastern District of Michigan, Southern Division, that the matters set forth in said Notice are true except as to those matters stated herein to be upon his information and belief as to which matters he is informed and believes same to be true.

Further deponent sayeth not.

/s/Timothy J. Jordan
TIMOTHY J. JORDAN (P46098)

Subscribed and sworn to before me
On the 1st day of February, 2013.

/s/Laura Ann Powell
County of Wayne, Acting in Wayne
State of Michigan
My Commission Expires: 03/28/2015

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RANDALL FOX,

Case No:

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Plaintiffs,

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DAVID ZIMMER, LUCIA SPECIALIZED
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GARAN LUCOW MILLER, P.C.
Attorneys for Defendants
1000 Woodbridge Street
Detroit, MI 48207
(313) 446-5531

PROOF OF SERVICE

1 I hereby certify that on **February 1, 2013**, my assistant, Laura A. Powell, electronically filed the foregoing document with the United States District Court Eastern District of Michigan Southern Division using the ECF System which will send notification to all counsel of record.

ZAMLER, MELLEN & SHIFFMAN, P.C.
RONALD K. WEINER (P40706)
23077 Greenfield Road, Suite 557
Southfield, Michigan 48075

Jackson County Circuit Court
312 Jackson Street
Jackson, MI 49201

GARAN LUCOW MILLER, P.C.

/s/Timothy J. Jordan

TIMOTHY J. JORDAN (P46098)
Attorneys for Defendants
1000 Woodbridge Street
Detroit, MI 48207-3192
(313) 446-5531
tjordan@garanlucow.com

Dated: February 1, 2013

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

RANDALL FOX,

Case No: 12-3955-NI
Hon. Richard N. LaFlamme

Plaintiffs,

vs.

DAVID ZIMMER, LUCIA SPECIALIZED
HAULING, INC., A New York corporation, and
ZURICH AMERICAN INSURANCE COMPANY,
a New York property and casualty insurer,

Defendants.

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**NOTICE OF FILING OF NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. §1446(b)**

TO: Jackson County Clerk of the Court
Ronald K. Weiner, Esq.

PLEASE TAKE NOTICE that a Notice of Removal of the entitled action from the Jackson County Circuit Court, State of Michigan, to the United States District Court for the Eastern District of Michigan, a copy of which is attached hereto, was duly filed on February 1, 2013, in the United States District Court for the Eastern District of Michigan.

GARAN LUCOW MILLER, P.C.



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Dated: February 1, 2013

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

LAURA A. POWELL, being first duly sworn, deposes and says that she is employed by GARAN LUCOW MILLER, P.C., and that on the 1st day of February 2013, she served a copy of: **NOTICE OF FILING OF NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. §1446(b), DEFENDANTS' NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. §1446(b) AND THIS PROOF OF SERVICE** upon:

ZAMLER, MELLEN & SHIFFMAN, P.C.
RONALD K. WEINER
23077 Greenfield Road, Suite 557
Southfield, Michigan 48075

by placing same in envelopes addressed as above with postage prepaid and by depositing same in the United States Mail.


LAURA A. POWELL

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